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ABSTRACT

Developments that highlight the importance of state oversight and authorization of higher education institutions and the objectives of the current Colorado Springs seminar on this topic are considered. In addition to the basic fact that states are the origin of chartering, licensing, and authorization of educational institutions, states have needed to develop more effective laws and agencies and to take more seriously their authorization and regulatory functions. This is in part because of the number of awards of federal funds to institutions, including funds under the G.I. Bill. The growth of postsecondary and higher education during the 1960s and first half of the 1970s and the growing public concern for consumer protection are among the other issues prompting state oversight and authorization efforts. One forum for state authorizing agencies of proprietary and nondegree programs has been the National Association of State Approval Agencies. The Education Commission of the States (ECS) developed model legislation to assess not only state legislation but also regulations, and to some extent operations. Both the ECS and the Federal Interagency Committee on Education have urged further strengthening of state laws, adoption of ECS model legislation, and development of a clearinghouse for information among states on authorization and on consumer protection. The establishment of the Council of Postsecondary Accreditation and a seminar in 1976 (Keystone) specifically designed for state approval agencies are also noted. Studies that have an impact are also briefly described. Objectives of the present seminar at Colorado Springs are to review the American Institutes for Research federally funded report, "Study of State Oversight in Postsecondary Education," problems faced by authorizing agencies, the adequacy of present laws and regulations, and the relations of state oversight operations to accreditation and to the federal government. (SW)

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TO COLORADO SPRINGS AND BEYOND

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Alfred North Whitehead has described every moment as the culmination, convergence and synthesis of diverse histories, as a unique event in itself in which things happen and as a new beginning shaping the future. This meeting at Colorado Springs uniquely illustrates what Whitehead was talking about. It grows out of the congruence of a series of historical developments, some recent and some of much longer duration, which highlight the importance today of state oversight and authorization of institutions to operate and the need not only for reconsideration of institutional, state and federal policy issues but for critical concern with the practical operational issues involved in effective oversight by state authorizing agencies.

What I would like to do is identify some of these converging factors, highlight the objectives of this seminar and suggest some of the directions or impact that may grow out of it if our deliberations are as fruitful as all of us hope they will be. First, suppose we look briefly at some of the converging factors that have brought about the seminar and, in fact, made it necessary.

I hardly need remind you that back of all other developments leading to today is not eligibility for federal funds, nor the relation of authorization to accreditation nor even the present level of concern with information for students — as important as these are — but the basic fact that it is in the states and by the states that educational institutions have been and are chartered, incorporated, licensed and/or authorized to operate. At a meeting in Keystone, Colorado, in July 1977, on "The Maintenance of Academic Quality in a Time of Uncertainty," I pointed out to many in this group that the involvement of states with the formation of schools and colleges is coextensive with their existence as states.

You will recall that the New York Board of Regents, established by the first session of the New York state legislature, was in fact the first state agency established to authorize institutions to operate, to grant degrees, to require reasonable quality and to insure that institutions would serve "the best interests of the people of the state as a whole." You will also recall that even in the Dartmouth case (1819) the Supreme Court, which upheld the conditions of a charter as a contract, did not challenge the basic responsibility of the state to license or charter or to set the conditions under which a charter or license could be granted.

This is ancient history and you are as aware as I am that until relatively recently, with some exceptions, states have not taken this responsibility very seriously. It is, however, important to recall it and to keep it in mind if for no other reason than to keep perspective straight. State authorization has its roots in the constitutional responsibility of the states for education. It is not the result of a federal or any other external mandate. With the current size, importance and complexity of postsecondary education, it is crucially important that it be done and be done well for the best interests of the people of the state and the nation as a whole, whether or not federal programs or anything else utilized or depended upon it.

Having recognized this, however, there is no question that events since World War II, including development of federal programs, have radically changed the perception of the importance of state authorization and have encouraged the states to develop more effective laws and agencies and to take their authorization and regulatory functions far more seriously. As you are well aware, in 1950 only a handful of states exercised their authorizing functions effectively. In most states institutions were authorized by articles of incorporation granted by the secretary of state. In some states charters were granted directly by the legislature. Today the picture is very different.

By January 1977, 47 states and the District of Columbia had established agencies and exercised some kind of licensing authority over private nondegree or proprietary institutions. Thirty-eight states exercised specific licensing authority over private degree-granting institutions, and an additional five states had laws and agencies primarily for nondegree-granting institutions that covered degree-granting in-

stitutions under certain circumstances. The laws still differ considerably from state to state as do the agencies that enforce them. But the striking factor is the close to unanimous recognition by the states of the importance of the authorizing function and in many cases the need for strengthening it. It should also be noted that in even the three states with no laws some activity to correct the situation is under consideration.

This change has been brought about by a number of things. First, even before World War II, legitimate institutions in some states became concerned about degree mills — institutions offering degrees for substandard, minimal or no work to a gullible public for pecuniary gain. Second, returning veterans under the G. I. Bill sometimes ran into fraudulent or substandard operations in some cases specifically devised to part the veteran from his federal funds. The federal government as well as the states became concerned, and as early as 1952 in the Servicemen's Readjustment Act, Congress began to specify conditions of institutional eligibility for federal funds, including authorization to operate within the state of residence and accreditation by an agency recognized by the U.S. Commissioner of Education as capable of attesting to the quality of instruction offered. Today some 20 federal statutes in addition to this law depend upon the federal eligibility system, including state authorization for awards of federal funds to institutions.

Third is the phenomenal growth of postsecondary and higher education during the 1960s and first half of the 1970s and the opportunities that this presented for less than reputable institutions to take advantage of public desire for education beyond the high school. Fourth has been growing public concern with consumer protection in all fields and the recognition specifically of the need for consumer protection in education beginning in the early 1970s. Fifth has been the series of exposures of fraud, abuse and submarginal operations from the *Life* magazine article of the early 1970s to the recent programs on "60 Minutes," which have increased public awareness.

Sixth has been the Congressional and Administration's concern with fraud and abuse in federal programs, which led, among other things, to the disclosure provisions and extension of the U.S. Commissioner's responsibility to limit, suspend and terminate institutional eligibility in the Education Amendments of 1976. Seventh has been the growing concern in the mid-1970s not just with protection of students from fraud, abuse and substandard programs, but with supplying students with objective and more complete information in order to make effective choices of institutions and careers in postsecondary education. And, finally, is the growing concern in recent years with off-campus, out-of-state and nontraditional forms of education and the extent to which they do or do not provide real educational benefits.

This list is not exhaustive but illustrative. Along with it have gone other responsive and positive histories that bring us together here. One part of this is, as already noted, the number of states that have taken positive action to develop more effective legislation and agencies to deal with the issue of authorization and that have and are in fact exercising their regulatory functions in a conscientious manner. Closely related has been the growing concern and initiative taken on the part of those agencies and administrators designated to carry out the authorizing functions with (1) the importance of their tasks; (2) the need for communication among themselves about general developments, improved regulations and standards, more effective operations and strengthening state legislation itself; and (3) the need for more adequate interchange with other groups, including accrediting agencies and the federal government concerned with similar but complementary issues.

Fairly early the state administrators of veterans programs had formed the National Association of State Approval Agencies (NASAA) to share common concerns. In connection with the 1971 Minneapolis meeting of NASAA, a group of state administrators of proprietary schools got together, and as a result of that meeting, in addition to one in Washington later that fall, the National Association of State Supervisors and Administrators of Private Schools (NASSAPS) was formed to provide a forum for state authorizing agencies of proprietary and nondegree programs. Since that time NASSAPS not only has grown as additional states have added agencies but has taken the initiative in developing its own studies (1973-1975) of state effectiveness and standards and in determining how the states might assume a more effective role in helping to determine institutional eligibility.

In addition NASSAPS has encouraged important federal studies, has cooperated with other organizations in attempting to develop more effective lines of communication and has been one of the major positive forces leading to a series of meetings such as this at which issues

have been identified and positive action taken. For example, it played a critical role in the Arlie House conference in 1975 sponsored by the Postsecondary Education Convening Authority, which for the first time brought together those agencies responsible for authorizing nonprofit degree-granting institutions — a conference, significantly, on "state licensing of postsecondary educational institutions."

Another part of this positive history was the development of model legislation by a task force of the Education Commission of the States (ECS), completed in June of 1973. The task force itself represented a coalition of legislators, state approval agencies, state higher education agencies, accrediting agencies, the Office of Education, the Veterans Administration and the Federal Interagency Committee on Education. It was financially supported by ECS and a combination of federal agencies. The model legislation that resulted has been utilized by some 23 states in various ways. It has served as a reference point not only in relation to assessment of state legislation, as intended, but also for regulations and to some extent operations since.*

Among the important offshoots of developing the model legislation was planning for the first national conference on consumer protection in postsecondary education, held in Denver in spring of 1974, followed by a second such conference in the fall of 1974 in Knoxville, Tennessee. These conferences for the first time brought together representatives of the state agencies, the federal agencies, consumer protection groups, accrediting agencies, students and others all concerned not only with state authorization but with all aspects of assurance of minimum standards, quality and adequate information for students.

At about the same time the Federal Interagency Committee on Education (FICE) developed its own internal federal task force on consumer protection in postsecondary education. Both the ECS conferences and the FICE task force report urged further strengthening of state laws, adoption of the ECS model legislation, development of a clearinghouse for information among states on authorization and on consumer protection and continued cooperation among all the interested groups.

In the meantime, in the area of accreditation as it relates to eligibility for federal funds, a number of developments had occurred. The National Commission on Accrediting and the Federation of Regional Accrediting Commissions of Higher Education had begun discussions that were to lead to their merger in the Council on Postsecondary Accreditation. Two reports highly critical not just of accreditation but of the entire eligibility system emerged. The first was the Newman report** that, though never formally published, was widely circulated in draft form and had considerable impact in raising critical issues. The second was the Orlans report*** published in 1974, which was followed by a U.S. Office of Education-sponsored national invitational conference on institutional eligibility in 1975.

Accrediting agencies in the meantime separately and, with the advent of the Council on Postsecondary Accreditation, together had undergone considerable evolution and had become more aware of their public as well as institutional responsibilities. They had identified as their major concern not just assurance of minimal quality but institutional qualitative improvement. At the national conference on institutional eligibility, however, it became evident that the nature and extent of the state role in authorization and licensure was not as clearly understood as it ought to be. It was at that time that first discussions about the need for an in-depth study of state oversight operations took place.

It was during this period that Richard Fulton, then executive secretary and general counsel of the Association of Independent Colleges and Schools, coined the phrase "the triad" for interrelations among the federal government, the accrediting agencies and the states as they separately and together are involved in determination of institutional eligibility. While representatives of the triad had taken part in the ECS model legislation, in the consumer protection conferences and in the national conference on institutional eligibility, it now became an explicit concern to explore their interrelations more fully and to develop continuing communication and working relations. A conference in January 1976, sponsored again by the Postsecondary Education Convening Authority, was devoted specifically to such exploration.

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* See Steven M. Jung, et al., *A Study of State Oversight in Postsecondary Education, Final Technical Report* (Palo Alto, Calif.: American Institutes for Research, December 30, 1977).

** Newman, Frank, *Unpublished manuscript for the U.S. Office of Education.*

*** Orlans, Harold, et al, *Private Accreditation and Public Eligibility.* (Washington, D.C.: Brookings Institution and National Academy of Public Administration Foundation, October 1974).

This leads us to mid-1976 and Keystone, a seminar specifically designed for state approval agencies to accomplish three things: (1) to establish lines of communication among state authorizing officials, some of them new in their positions and their responsibilities; (2) to provide a working session including the operational aspects of state authorization; and (3) to deal with policy issues on the state level as these related to the other members of the triad. It was the hope of the planners and participants that the Keystone experience could be repeated if not annually at least biennually.

One other series of developments must be added. I have already mentioned the impact of the Newman and the Orlans reports. Two other studies call for brief mention and a third is critical to this meeting. The first two studies deal more specifically with consumer protection. One of these, Better Information for Student Choice: National Project I, was funded by the Fund for the Improvement of Postsecondary Education and involved 11 institutions and 4 national agencies. The project was coordinated by the Education Commission of the States. Its primary focus was on better information for students and was aimed at ways in which institutions could improve communications with students. The second was a study, funded by the U.S. Office of Education (USOE), by the American Institutes for Research on improving the consumer protection function in postsecondary education. This second study had its roots in the Federal Interagency Committee on Education task force. It not only identified major abuses but developed a checklist of key consumer protection issues. This served as important background and point of reference for the third and crucial study.

This third study in part grew out of the discussions after the USOE's national invitational conference plus a number of other developments noted. The report, funded by USOE, is the *Study of State Oversight in Postsecondary Education* by the American Institutes for Research (AIR) under the direction of Steven Jung. This study for the first time gives a comprehensive picture of state licensure and authorization of institutions to operate; of the laws, regulations and operations of state agencies; and makes a series of significant recommendations on how licensure and authorization can be improved. A consideration of this report is one of the basic functions of this conference.

While the AIR report was in process, the federal General Accounting Office (GAO) was undertaking its own investigation of the assurances provided by the U.S. Office of Education's eligibility process. Although the GAO report has not been officially released, drafts have been circulated to USOE and key persons in the accrediting process. Regardless of the report's methodology or the accuracy of its information, it does suggest that the assurances need shoring.

Among its recommendations directly relevant to this meeting and reinforcing recommendations of the AIR report are the following: (1) that representatives of the Department of Health, Education and Welfare continue to meet with the states and accrediting associations to develop together definitions of their respective roles and to establish a reasonable timeframe for defining and implementing them; (2) that the Department of Health, Education and Welfare take steps to upgrade the state authorization process; and, (3) that the Department of Health, Education and Welfare conduct a study of what information should be shared by the parties in the eligibility process and establish a formal information-sharing system among these parties. The report argues that because the states possess the legal authority to permit or deny a school the right to operate within their borders, they currently represent the most effective means to insure that students are protected in their relations with schools.

In fall 1977, at a special invitational seminar for representatives of the triad plus selected persons from the wider educational community held in West Palm Beach, Florida, the immediate need for follow up to Keystone became evident. The message from the conference was clear. Tensions were developing among the members of the triad, due to the increasing competition for students in the postsecondary educational community, due to growing federal concern with increasing default rates and instances of fraud and abuse in marginal institutions and due to state concern with postsecondary educational accountability. Further, the key to effective control rests with the states exercising their regulatory functions, not in place of accreditation or federal operations but as a strong foundation on which accreditation and federal concern for eligibility can build.

Shortly after the 1977 meeting, the planning committee for this conference was set up with representatives from state agencies approving nondegree and proprietary institutions, state agencies approving nonprofit degree-granting institutions, the accrediting community, the U.S. Office of Education, the State Higher Edu-

cation Executive Officers and the American Institutes for Research. The minutes of the planning meeting and program outline were sent to all participants of the Florida conference for comment and suggestion. While this seminar is sponsored and funded by the Education Commission of the States and the Office of Education, other groups cooperated in it, as noted by Governor Bowen in his address.

And that, with some gaps, brings us to Colorado Springs. Again, the focus of this seminar is not on the federal government primarily nor on accreditation but on the states and their authorizing and oversight functions. It involves the federal government and accreditation from two standpoints. First, state action is the precondition of accreditation or federal action in relation to eligibility, for an institution must exist either to be accredited or to be eligible for federal funds, and to exist it must be incorporated, authorized to operate or licensed by a state. Second, to the extent that authorization is a continuing process including monitoring to insure that institutions continue to meet at least minimum conditions of fiscal and educational integrity, it is the foundation on which further assessments of quality and eligibility for federal as well as other types of programs rest. As such it is of vital interest to other members of the triad who may also help reinforce and inform action on the state level.

The objectives of this seminar are, it seems to me, rather clear. They grow out of the past history. Particularly important in this is the AIR report, which for the first time brings together comprehensive information on what the states are or are not doing about oversight (as of January 1977), including their laws, regulations and operations, and which makes significant recommendations for the future.

Clearly, one objective is to review the AIR report not as another historical document to be noted and shelved but as a working basis for further developments. We need to assess its strengths and weaknesses, but particularly its implications and recommendations for improving state oversight activity to better serve the needs of the citizens of the states and nation. A second equally important objective, as in Keystone, is to provide working sessions in which the issues, operational concerns, roadblocks and opportunities facing authorizing agencies in carrying out their functions can be shared and dealt with. The questions and discussion guides for the small workshop sessions, in addition to the material from the report, should help focus and highlight these discussions.

The third objective, related to the first two, is to look more critically at the relations of state oversight operations to accreditation and to the federal government, including ways in which accreditation and federal activities can reinforce and inform state oversight activities and vice versa. To what extent and what kind of technical assistance and support should or should not the federal government, and particularly the Division of Eligibility and Agency Evaluation of the USOE, make available to the states? In what ways can or cannot states and accrediting agencies complement each other or work together in dealing with such issues as the problem of off-campus and out-of-state institutional operations? How can more effective communication and understanding among state agencies — and of state agencies with accrediting agencies and the federal government — be established?

The fourth objective is to review the adequacy of present laws and regulations and to consider more specifically the kinds of factors that should be incorporated in regulations to carry out the intent of the laws. The fifth objective is to develop appropriate recommendations to the states, accrediting agencies and the federal government on future directions and actions to help enhance more adequate state oversight activities, not simply or primarily for the sake of enhancing agencies, but to serve the best interests of the people of the states and the nation.

These objectives constitute a large but critical order. The work of this seminar will be intense and hopefully lively. Not all of the issues can be explored thoroughly and not all the problems will be solved. But it would be difficult to overestimate the importance of the discussions. The seminar is a unique event in which things will happen. But far more important than this seminar as a meeting is the fact that it can constitute a new beginning. What does or does not happen here will inevitably set the stage for further developments. If for some reason we are unwilling or unable to work our way through the issues, confidence in state initiatives and the ability of state agencies effectively to protect both student consumers and legitimate academic operations will not be increased and other, perhaps federal, alternatives are likely to be explored. If the solid work of this meeting indicates progress and commitment, everyone, including students, the public, lenders and institutions, will benefit and the possibility of an effective state and interstate oversight network will be enhanced.

We are facing a period, as you are all too well aware of, of increased competition for students, of changing student clienteles, of demands for increased accountability and of changing state and national priorities. All of these and other factors will highlight the oversight role of the states in licensing and authorizing institutions to operate. From this standpoint, while the road leading to Colorado Springs is important, what happens here is even more important, and most important is what happens beyond Colorado Springs as a result.